

FIRST APPEAL NO.266 of 1984
with
Cross Objections

Date of decision: March 6,1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law..

interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr.Rajni H.Mehta, L.A. for the appellant
Mr.K.H.Baxi for respondents 1 to 5
Mr.P.B.Majmudar for respondent no.8
Rest served

Coram: N.J.Pandya & A.R.Dave,JJ.
March 6, 1996

ORAL JUDGMENT (Per N.J.Pandya,J.)

This appeal is directed against the judgment and

award that came to be rendered by Motor Accident Claims Tribunal No.2 of Ahmedabad City in Claim Petition No.47 of 1981. The learned Tribunal Judge, by judgment dated 21-2-1983 had disposed of two claim applications, one of them already referred to and the other one happens to be Claim Petition NO.11 of 1981. The appeal is directed only against the order in Claim Petition No.47 of 1981.

2. The original claimants of that claim application have preferred cross objections also. They have prayed for compensation of Rs.4 lakhs and as against that, the claim awarded to them is only Rs.1,61,672/- with interest and cost.

3. The appellant-Insurance Company has all alone maintained that its liability under the policy of Insurance will be to the tune of rs.50,000/- only. Their case is based on the provisions of Motor Vehicles Act 1938 more particularly Sec.95(2) Clause (b).

4. It is not in dispute, so far as the contesting respondents are concerned, that the bus involved in the incident, was used by the school management for the purpose of bringing students from their residence to the school and back. It is also an admitted position that the school management charged what is referred to as a nominal fee for making this facility available to its students. It has been noted by the learned Judge also at page 20 of the judgment.

5. The relevant definition clause will be sub-sec.25 of Sec.2 of the said Act where a public service vehicle is defined. The learned Judge is of the view that the management is not earning any profit out of it and the nominal fee levied for the said service would not make the use of the vehicle as a public service vehicle and therefore, the Insurance Company cannot take shelter behind the said provisions of the Motor Vehicles Act and as a consequence, the Insurance Policy will help it.

6. The aforesaid reasoning is clearly erroneous. The question is whether any fee is charged because the act contemplates use of a vehicle carrying passenger either for higher or reward. Obviously, it does not cover in the concept, the aspect of profit earning. If a fee is charged whether it is nominal or not, whether it leads to earning any profit or not, the requirement, in our opinion, of the said section is fulfilled and therefore, the vehicle will fall within the definition of sub-sec.2 of Sec.25 and hence, it will be a bus used for carrying passenger. The consequence thereof will follow namely

that the liability of the Company will be to the extent of Rs.50,000/- only. The appeal stands allowed accordingly.

7. Now we come to the cross-objection. While granting compensation, the learned Judge has adopted unit method which is an accepted practice. However, in our opinion, what he has forgot in the process is two components of the salary income of the deceased--one which he would have earned either by way of promotion or periodical increment till the end of his service and the other the aspect of loss to the estate in form of Provident Fund accumulation and death-cum-retirement gratuity as a part of retirement benefit plan.

8. Exh.63, the deposition given by the Labour Welfare Officer of Vivekanand Mill where the deceased was working at the relevant time contains all the materials in this regard and going through the same Ms.Kruti Vohra, for Mr.B.H.Baxi has submitted that the basic salary at the time of the incident was Rs.607/- per month which, including D.A., as set out in certificate Exh.64 would come to Rs.1051.39. In the cross examination we find that even if he did not get promotion, the deceased would have reached the pay scale of 823 basic at the end of almost 16 years of service. By that time, corresponding increase in DA in the prevalent standard would have been there.

9. In the judgment itself there is a reference to negotiated settlement between the Union and the Mill management, but the learned Judge has discarded the same on the ground that it was to take effect from 1-1-1981, while on account of the incident leading to the filing of the claim petition having taken place on 10-8-1995, the deceased would not be entitled to the same. This is not a case of entitlement as such. What is to be considered is the likely increase in future income either on account of earning increments or on account of upward revision of salary by negotiated settlement or may be even Industrial Court award.

10. In our opinion, therefore, suitable increase can be taken care of by putting the dependency figure at Rs.1100/-, i.e. to grant addition of Rs.284/-.

11. Once this increase is worked upon on the same basis as the learned Judge has done (Rs.284x12x16), it would come to Rs.54,528/- which the petitioners are entitled to additionally.

12. On the same basis, the loss of estate will also have to be worked out. For this purpose, two components to be borne in mind are contributory P.F. scheme and the gratuity. No doubt the P.F. scheme admits of possibility of withdrawal and in fact, during his life time itself, as stated by the said witness at Eh.63, the deceased had already withdrawn a part of his PF accumulation.

13. This cannot be the position with regard to gratuity. It will have to be worked out on the basis of the negotiated new pay scale because by the time, the deceased would have retired he would have got the same. Even if we exclude the new pay structure because that has not come on record, and if we take the old pay scale where the petitioner would have got upto atleast Rs.1800/- as monthly wages for gratuity purposes, if that is multiplied by 15 that is the maximum ceiling for getting gratuity in that case the figure would work out to Rs.27,000/- towards gratuity. So far as provident fund is concerned, looking to the pattern made out from the evidence at exh.63 with regard to the withdrawal, we take it that half the amount of provident fund could have been withdrawn and utilised by the deceased during his life time. The balance in his provident fund account at the time of the incident was Rs.7,188.44. But for the withdrawal that figure would have been Rs.13,715.04. During the remaining period of service, but for the incident, in our opinion, under the provident fund account, there would have been accumulation of additional sum of Rs.20,000/- which after allowing for the aforesaid pattern of withdrawal would have reduced to almost half. In other words, under the provident fund account, in our opinion, the loss to the estate can be worked out at Rs.17,188/-, which is rounded off to Rs.18,000/-.

14. The total additional amount payable to the original claimant would be Rs.54,528/- and added to that is Rs.27,000/- towards gratuity and Rs.18,000/- towards provident fund accumulation making the total to Rs.99,528/-. The cross objections are allowed to that extent. The said amount is ofcourse with proportionate cost and interest at the rate of 12% per annum from the date of the application till realisation.

15. A company was required to pay the entire amount awarded by the trial Court. As its liability is now restricted to Rs.50,000/- with proportionate cost and interest, out of the amount lying by way of investment with the tribunal, after deducting the sum of Rs.10,000/- that is ordered to be paid to the claimant,

the proportionate sum with reference to balance amount of rs.40,000/- i.e. proportionate cost and interest will be worked out and the rest of the amount lying with the tribunal by way of investment will be refunded to the Insurance Company. The appeal and the cross objection stand disposed of accordingly.